

tions other than honorable but who had been issued an Exemplary Rehabilitation Certificate.

§ 606. Repealed. Pub. L. 97-306, title III, § 311, Oct. 14, 1982, 96 Stat. 1442; Pub. L. 97-375, title I, § 110(a), Dec. 21, 1982, 96 Stat. 1820

Section, Pub. L. 90-83, § 6(f), Sept. 11, 1967, 81 Stat. 221, directed Secretary of Labor to report to Congress not later than Jan. 15 of each year the number of cases reviewed under this chapter and the number of certificates issued.

§ 607. Repealed. Pub. L. 97-306, title III, § 311, Oct. 14, 1982, 96 Stat. 1442

Section, Pub. L. 90-83, § 6(g), Sept. 11, 1967, 81 Stat. 221, provided that in carrying out provisions of this chapter Secretary of Labor was authorized to issued regulations, delegate authority, and utilize services of the Civil Service Commission for making such investigations as might have been mutually agreeable.

#### CHAPTER 14—AGE DISCRIMINATION IN EMPLOYMENT

- Sec.
621. Congressional statement of findings and purpose.
622. Education and research program; recommendation to Congress.
623. Prohibition of age discrimination.
- (a) Employer practices.
  - (b) Employment agency practices.
  - (c) Labor organization practices.
  - (d) Opposition to unlawful practices; participation in investigations, proceedings, or litigation.
  - (e) Printing or publication of notice or advertisement indicating preference, limitation, etc.
  - (f) Lawful practices; age an occupational qualification; other reasonable factors; laws of foreign workplace; seniority system; employee benefit plans; discharge or discipline for good cause.
  - (g) Entitlement to coverage under group health plan.
  - (h) Practices of foreign corporations controlled by American employers; foreign employers not controlled by American employers; factors determining control.
  - (i) Employment as firefighter or law enforcement officer.
624. Study by Secretary of Labor; reports to President and Congress; scope of study; implementation of study; transmittal date of reports.
625. Administration.
- (a) Delegation of functions; appointment of personnel; technical assistance.
  - (b) Cooperation with other agencies, employers, labor organizations, and employment agencies.
626. Recordkeeping, investigation, and enforcement.
- (a) Attendance of witnesses; investigations, inspections, records, and homework regulations.
  - (b) Enforcement; prohibition of age discrimination under fair labor standards; unpaid minimum wages and unpaid overtime compensation; liquidated damages; judicial relief; conciliation, conference, and persuasion.

Sec.

627.  
628.  
629.  
630.  
631.

- (c) Civil actions; persons aggrieved; jurisdiction; judicial relief; termination of individual action upon commencement of action by Commission; jury trial.
- (d) Filing of charge with Commission; timeliness; conciliation, conference, and persuasion.
- (e) Statute of limitations; reliance in future on administrative ruling, etc.; tolling.

Notices to be posted.  
Rules and regulations; exemptions.  
Criminal penalties.  
Definitions.  
Age limits.

632.  
633.

- (a) Individuals at least 40 years of age.
  - (b) Employees or applicants for employment in Federal Government.
  - (c) Bona fide executives or high policy-makers.
  - (d) Tenured employee at institution of higher education.
- Annual report to Congress.  
Federal-State relationship.

633a.

- (a) Federal action superseding State action.
  - (b) Limitation of Federal action upon commencement of State proceedings.
- Nondiscrimination on account of age in Federal Government employment.
- (a) Federal agencies affected.
  - (b) Enforcement by Equal Employment Opportunity Commission and by Librarian of Congress in the Library of Congress; remedies; rules, regulations, orders, and instructions of Commission; compliance by Federal agencies; powers and duties of Commission; notification of final action on complaint of discrimination; exemptions: bona fide occupational qualification.
  - (c) Civil actions; jurisdiction; relief.
  - (d) Notice to Commission; time of notice; Commission notification of prospective defendants; Commission elimination of unlawful practices.
  - (e) Duty of Government agency or official.
  - (f) Applicability of statutory provisions to personnel action of Federal departments, etc.
  - (g) Study and report to President and Congress by Equal Employment Opportunity Commission; scope.
- Authorization of appropriations.

#### CROSS REFERENCES

Age discrimination in federally assisted programs, see section 6101 et seq. of Title 42, The Public Health and Welfare.

Civil rights, Federally assisted programs, see section 2000d et seq. of Title 42.

#### CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 42 sections 3012, 3056a, 6103.

§ 621. Congressional statement of findings and purpose

(a) The Congress hereby finds and declares that—

(1) in the face of rising productivity and affluence, older workers find themselves disad-

vantaged in their efforts to retain employment, and especially to regain employment when displaced from jobs;

(2) the setting of arbitrary age limits regardless of potential for job performance has become a common practice, and certain otherwise desirable practices may work to the disadvantage of older persons;

(3) the incidence of unemployment, especially long-term unemployment with resultant deterioration of skill, morale, and employer acceptability is, relative to the younger ages, high among older workers; their numbers are great and growing; and their employment problems grave;

(4) the existence in industries affecting commerce, of arbitrary discrimination in employment because of age, burdens commerce and the free flow of goods in commerce.

(b) It is therefore the purpose of this chapter to promote employment of older persons based on their ability rather than age; to prohibit arbitrary age discrimination in employment; to help employers and workers find ways of meeting problems arising from the impact of age on employment.

(Pub. L. 90-202, § 2, Dec. 15, 1967, 81 Stat. 602.)

#### EFFECTIVE DATE; RULES AND REGULATIONS

Section 16, formerly § 15, of Pub. L. 90-202, renumbered by Pub. L. 93-259, § 28(b)(1), Apr. 8, 1974, 88 Stat. 74, provided that: "This Act [enacting this chapter] shall become effective one hundred and eighty days after enactment [Dec. 15, 1967], except (a) that the Secretary of Labor may extend the delay in effective date of any provision of this Act up to and additional ninety days thereafter if he finds that such time is necessary in permitting adjustments to the provisions hereof, and (b) that on or after the date of enactment [Dec. 15, 1967] the Secretary of Labor is authorized to issue such rules and regulations as may be necessary to carry out its provisions."

#### SHORT TITLE OF 1986 AMENDMENT

— Pub. L. 99-592, § 1, Oct. 31, 1986, 100 Stat. 3342, provided that: "This Act [amending sections 623, 630, and 631 of this title and enacting provisions set out as notes under sections 622 to 624 and 631 of this title] may be cited as the 'Age Discrimination in Employment Amendments of 1986'."

#### SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95-256, § 1, Apr. 6, 1978, 92 Stat. 189, provided that: "This Act [amending sections 623, 624, 626, 631, 633a, and 634 of this title and sections 8335 and 8339 of Title 5, Government Organization and Employees, repealing section 3322 of Title 5, and enacting provisions set out as notes under sections 623, 626, 631, and 633a of this title] may be cited as the 'Age Discrimination in Employment Act Amendments of 1978'."

#### SHORT TITLE

Section 1 of Pub. L. 90-202 provided: "That this Act [enacting this chapter] may be cited as the 'Age Discrimination in Employment Act of 1967'."

#### TRANSFER OF FUNCTIONS

All functions vested by this section in the Secretary of Labor or the Civil Service Commission were transferred to the Equal Employment Opportunity Commission by Reorg. Plan No. 1 of 1978, § 2, 43 F.R. 19807, 92 Stat. 3781, set out in the Appendix to Title 5, Government Organization and Employees, effective

Jan. 1, 1979, as provided by section 1-101 of Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053.

#### § 622. Education and research program; recommendation to Congress

(a) The Secretary of Labor shall undertake studies and provide information to labor unions, management, and the general public concerning the needs and abilities of older workers, and their potentials for continued employment and contribution to the economy. In order to achieve the purposes of this chapter, the Secretary of Labor shall carry on a continuing program of education and information, under which he may, among other measures—

(1) undertake research, and promote research, with a view to reducing barriers to the employment of older persons, and the promotion of measures for utilizing their skills;

(2) publish and otherwise make available to employers, professional societies, the various media of communication, and other interested persons the findings of studies and other materials for the promotion of employment;

(3) foster through the public employment service system and through cooperative effort the development of facilities of public and private agencies for expanding the opportunities and potentials of older persons;

(4) sponsor and assist State and community informational and educational programs.

(b) Not later than six months after the effective date of this chapter, the Secretary shall recommend to the Congress any measures he may deem desirable to change the lower or upper age limits set forth in section 631 of this title.

(Pub. L. 90-202, § 3, Dec. 15, 1967, 81 Stat. 602.)

#### REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (b), means the effective date of Pub. L. 90-202, which is one hundred and eighty days after the enactment of this chapter, except that the Secretary of Labor may extend the delay in effective date an additional ninety days thereafter for any provision to permit adjustments to such provisions. See section 16 of Pub. L. 90-202, set out as a note under section 621 of this title.

#### STUDY AND PROPOSED GUIDELINES RELATING TO POLICE OFFICERS AND FIREFIGHTERS

Pub. L. 99-592, § 5, Oct. 31, 1986, 100 Stat. 3343, provided that:

"(a) **STUDY.**—Not later than 4 years after the date of enactment of this Act [Oct. 31, 1986], the Secretary of Labor and the Equal Employment Opportunity Commission, jointly, shall—

"(1) conduct a study—

"(A) to determine whether physical and mental fitness tests are valid measurements of the ability and competency of police officers and firefighters to perform the requirements of their jobs,

"(B) if such tests are found to be valid measurements of such ability and competency, to determine which particular types of tests most effectively measure such ability and competency, and

"(C) to develop recommendations with respect to specific standards that such tests, and the administration of such tests should satisfy, and

"(2) submit a report to the Speaker of the House of Representatives and the President pro tempore of the Senate that includes—

"(A) a description of the results of such study, and

"(B) a statement of the recommendations developed under paragraph (1)(C).

"(b) **CONSULTATION REQUIREMENT.**—The Secretary of Labor and the Equal Employment Opportunity Commission shall, during the conduct of the study required under subsection (a) and prior to the development of recommendations under paragraph (1)(C), consult with the United States Fire Administration, the Federal Emergency Management Agency, organizations representing law enforcement officers, firefighters, and their employers, and organizations representing older Americans.

"(c) **PROPOSED GUIDELINES.**—Not later than 5 years after the date of the enactment of this Act (Oct. 31, 1986), the Equal Employment Opportunity Commission shall propose, in accordance with subchapter II of chapter 5 of title 5 of the United States Code, guidelines for the administration and use of physical and mental fitness tests to measure the ability and competency of police officers and firefighters to perform the requirements of their jobs."

### § 623. Prohibition of age discrimination

#### (a) Employer practices

It shall be unlawful for an employer—

(1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age; or

(3) to reduce the wage rate of any employee in order to comply with this chapter.

#### (b) Employment agency practices

It shall be unlawful for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of such individual's age, or to classify or refer for employment any individual on the basis of such individual's age.

#### (c) Labor organization practices

It shall be unlawful for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his age;

(2) to limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's age;

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

#### (d) Opposition to unlawful practices; participation in investigations, proceedings, or litigation

It shall be unlawful for an employer to discriminate against any of his employees or applicants for employment, for an employment agency to discriminate against any individual,

or for a labor organization to discriminate against any member thereof or applicant for membership, because such individual, member or applicant for membership has opposed any practice made unlawful by this section, or because such individual, member or applicant for membership has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or litigation under this chapter.

#### (e) Printing or publication of notice or advertisement indicating preference, limitation, etc.

It shall be unlawful for an employer, labor organization, or employment agency to print or publish, or cause to be printed or published, any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, indicating any preference, limitation, specification, or discrimination, based on age.

#### (f) Lawful practices; age an occupational qualification; other reasonable factors; laws of foreign workplace; seniority system; employee benefit plans; discharge or discipline for good cause

It shall not be unlawful for an employer, employment agency, or labor organization—

(1) to take any action otherwise prohibited under subsections (a), (b), (c), or (e) of this section where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age, or where such practices involve an employee in a workplace in a foreign country, and compliance with such subsections would cause such employer, or a corporation controlled by such employer, to violate the laws of the country in which such workplace is located;

(2) to observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this chapter, except that no such employee benefit plan shall excuse the failure to hire any individual, and no such seniority system or employee benefit plan shall require or permit the involuntary retirement of any individual specified by section 631(a) of this title because of the age of such individual; or

(3) to discharge or otherwise discipline an individual for good cause.

#### (g) Entitlement to coverage under group health plan

(1) For purposes of this section, any employer must provide that any employee aged 65 or older, and any employee's spouse aged 65 or older, shall be entitled to coverage under any group health plan offered to such employees under the same conditions as any employee, and the spouse of such employee, under age 65.

(2) For purposes of paragraph (1), the term "group health plan" has the meaning given to such term in section 162(1)(2) of title 26.

(h) **Practices of foreign corporations controlled by American employers; foreign employers not controlled by American employers; factors determining control**

(1) If an employer controls a corporation whose place of incorporation is in a foreign country, any practice by such corporation prohibited under this section shall be presumed to be such practice by such employer.

(2) The prohibitions of this section shall not apply where the employer is a foreign person not controlled by an American employer.

(3) For the purpose of this subsection the determination of whether an employer controls a corporation shall be based upon the—

(A) interrelation of operations,

(B) common management,

(C) centralized control of labor relations, and

(D) common ownership or financial control, of the employer and the corporation.

(i) <sup>1</sup> **Employee pension benefit plans; cessation or reduction of benefit accrual or of allocation to employee account; distribution of benefits after attainment of normal retirement age; compliance; highly compensated employees**

(1) Except as otherwise provided in this subsection, it shall be unlawful for an employer, an employment agency, a labor organization, or any combination thereof to establish or maintain an employee pension benefit plan which requires or permits—

(A) in the case of a defined benefit plan, the cessation of an employee's benefit accrual, or the reduction of the rate of an employee's benefit accrual, because of age, or

(B) in the case of a defined contribution plan, the cessation of allocations to an employee's account, or the reduction of the rate at which amounts are allocated to an employee's account, because of age.

(2) Nothing in this section shall be construed to prohibit an employer, employment agency, or labor organization from observing any provision of an employee pension benefit plan to the extent that such provision imposes (without regard to age) a limitation on the amount of benefits that the plan provides or a limitation on the number of years of service or years of participation which are taken into account for purposes of determining benefit accrual under the plan.

(3) In the case of any employee who, as of the end of any plan year under a defined benefit plan, has attained normal retirement age under such plan—

(A) if distribution of benefits under such plan with respect to such employee has commenced as of the end of such plan year, then any requirement of this subsection for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of the actuarial equivalent of in-service distribution of benefits, and

(B) if distribution of benefits under such plan with respect to such employee has not

commenced as of the end of such year in accordance with section 1056(a)(3) of this title and section 401(a)(14)(C) of title 26, and the payment of benefits under such plan with respect to such employee is not suspended during such plan year pursuant to section 1053(a)(3)(B) of this title or section 411(a)(3)(B) of title 26, then any requirement of this subsection for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of any adjustment in the benefit payable under the plan during such plan year attributable to the delay in the distribution of benefits after the attainment of normal retirement age.

The provisions of this paragraph shall apply in accordance with regulations of the Secretary of the Treasury. Such regulations shall provide for the application of the preceding provisions of this paragraph to all employee pension benefit plans subject to this subsection and may provide for the application of such provisions, in the case of any such employee, with respect to any period of time within a plan year.

(4) Compliance with the requirements of this subsection with respect to an employee pension benefit plan shall constitute compliance with the requirements of this section relating to benefit accrual under such plan.

(5) Paragraph (1) shall not apply with respect to any employee who is a highly compensated employee (within the meaning of section 414(q) of title 26) to the extent provided in regulations prescribed by the Secretary of the Treasury for purposes of precluding discrimination in favor of highly compensated employees within the meaning of subchapter D of chapter 1 of title 26.

(6) A plan shall not be treated as failing to meet the requirements of paragraph (1) solely because the subsidized portion of any early retirement benefit is disregarded in determining benefit accruals.

(7) Any regulations prescribed by the Secretary of the Treasury pursuant to clause (v) of section 411(b)(1)(H) of title 26 and subparagraphs (C) and (D) of section 411(b)(2) of title 26 shall apply with respect to the requirements of this subsection in the same manner and to the same extent as such regulations apply with respect to the requirements of such sections 411(b)(1)(H) and 411(b)(2).

(8) A plan shall not be treated as failing to meet the requirements of this section solely because such plan provides a normal retirement age described in section 1002(24)(B) of this title and section 411(a)(8)(B) of title 26.

(9) For purposes of this subsection—

(A) The terms "employee pension benefit plan", "defined benefit plan", "defined contribution plan", and "normal retirement age" have the meanings provided such terms in section 1002 of this title.

(B) The term "compensation" has the meaning provided by section 414(s) of title 26.

<sup>1</sup> So in original. There are two subsecs. designated "(i)".

(i) <sup>1</sup> Employment as firefighter or law enforcement officer

It shall not be unlawful for an employer which is a State, a political subdivision of a State, an agency or instrumentality of a State or a political subdivision of a State, or an interstate agency to fail or refuse to hire or to discharge any individual because of such individual's age if such action is taken—

(1) with respect to the employment of an individual as a firefighter or as a law enforcement officer and the individual has attained the age of hiring or retirement in effect under applicable State or local law on March 3, 1983, and

(2) pursuant to a bona fide hiring or retirement plan that is not a subterfuge to evade the purposes of this chapter.

(Pub. L. 90-202, § 4, Dec. 15, 1967, 81 Stat. 603; Pub. L. 95-256, § 2(a), Apr. 6, 1978, 92 Stat. 189; Pub. L. 97-248, title I, § 116(a), Sept. 3, 1982, 96 Stat. 353; Pub. L. 98-369, div. B, title III, § 2301(b), July 18, 1984, 98 Stat. 1063; Pub. L. 98-459, title VIII, § 802(b), Oct. 9, 1984, 98 Stat. 1792; Pub. L. 99-272, title IX, § 9201(b)(1), (3), Apr. 7, 1986, 100 Stat. 171; Pub. L. 99-509, title IX, § 9201, Oct. 21, 1986, 100 Stat. 1973; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99-592, §§ 2(a), (b), 3(a), Oct. 31, 1986, 100 Stat. 3342.)

## AMENDMENTS

1986—Subsec. (g)(1). Pub. L. 99-272, § 9201(b)(1), and Pub. L. 99-592, § 2(a), made identical amendments, substituting "or older" for "through 69" in two places.

Subsec. (g)(2). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

Subsec. (h). Pub. L. 99-272, § 9201(b)(3), and Pub. L. 99-592, § 2(b), made identical amendments, redesignating subsec. (g), relating to practices of foreign corporations controlled by American employers, as subsec. (h).

Subsec. (i). Pub. L. 99-592, § 3(a), temporarily added subsec. (i) relating to employment as firefighter or law enforcement officer. See section 3(b) of Pub. L. 99-592, set out in Effective and Termination Dates of 1986 Amendments note below.

Pub. L. 99-509 added subsec. (i) relating to employee pension benefit plans.

1984—Subsec. (f)(1). Pub. L. 98-459, § 802(b)(1), inserted ", or where such practices involve an employee in a workplace in a foreign country, and compliance with such subsections would cause such employer, or a corporation controlled by such employer, to violate the laws of the country in which such workplace is located".

Subsec. (g). Pub. L. 98-459, § 802(b)(2), added subsec. (g) relating to practices of foreign corporations controlled by American employers.

Subsec. (g)(1). Pub. L. 98-369 inserted ", and any employee's spouse aged 65 through 69," after "aged 65 through 69" and ", and the spouse of such employee," after "as any employee", in subsec. (g) relating to entitlement to coverage under group health plan.

1982—Subsec. (g). Pub. L. 97-248 added subsec. (g) relating to entitlement to coverage under group health plans.

1978—Subsec. (f)(2). Pub. L. 95-256 provided that no seniority system or employee benefit plan require or permit the involuntary retirement of any individual specified by section 631(a) of this title because of the age of the individual.

## EFFECTIVE AND TERMINATION DATES OF 1986 AMENDMENTS

Section 7 of Pub. L. 99-592 provided that:

"(a) IN GENERAL.—Except as provided in subsection (b), this Act and the amendments made by this Act [amending sections 623, 630, and 631 of this title and enacting provisions set out as notes under sections 621, 622, 623, 624, and 631 of this title] shall take effect on January 1, 1987, except that with respect to any employee who is subject to a collective-bargaining agreement—

"(1) which is in effect on June 30, 1986,

"(2) which terminates after January 1, 1987,

"(3) any provision of which was entered into by a labor organization (as defined by section 6(d)(4) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(4)), and

"(4) which contains any provision that would be superseded by such amendments, but for the operation of this section,

such amendments shall not apply until the termination of such collective bargaining agreement or January 1, 1990, whichever occurs first.

"(b) EFFECT ON EXISTING CAUSES OF ACTION.—The amendments made by sections 3 and 4 of this Act [amending sections 623 and 630 of this title and enacting provisions set out as a note below] shall not apply with respect to any cause of action arising under the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.) as in effect before January 1, 1987."

Section 3(b) of Pub. L. 99-592 provided that: "The amendment made by subsection (a) of this section [enacting subsec. (i) of this section] is repealed December 31, 1993."

Section 9204 of subtitle C (§§ 9201-9204) of title IX of Pub. L. 99-509 provided that:

"(a) APPLICABILITY TO EMPLOYEES WITH SERVICE AFTER 1988.—

"(1) IN GENERAL.—The amendments made by sections 9201 and 9202 [amending sections 623 and 1054 of this title and section 411 of Title 26, Internal Revenue Code] shall apply only with respect to plan years beginning on or after January 1, 1988, and only to employees who have 1 hour of service in any plan year to which such amendments apply.

"(2) SPECIAL RULE FOR COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, paragraph (1) shall be applied to benefits pursuant to, and individuals covered by, any such agreement by substituting for 'January 1, 1988' the date of the commencement of the first plan year beginning on or after the earlier of—

"(A) the later of—

"(i) January 1, 1988, or

"(ii) the date on which the last of such collective bargaining agreements terminate (determined without regard to any extension thereof after February 28, 1986), or

"(B) January 1, 1990.

"(b) APPLICABILITY OF AMENDMENTS RELATING TO NORMAL RETIREMENT AGE.—The amendments made by section 9203 [amending sections 1002 and 1052 of this title and sections 410 and 411 of Title 26] shall apply only with respect to plan years beginning on or after January 1, 1988, and only with respect to service performed on or after such date.

"(c) PLAN AMENDMENTS.—If any amendment made by this subtitle [amending sections 623, 1002, 1052, and 1054 of this title and sections 410 and 411 of Title 26] requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after January 1, 1989, if—

"(1) during the period after such amendment takes effect and before such first plan year, the plan is op-

erated in accordance with the requirements of such amendment, and

"(2) such plan amendment applies retroactively to the period after such amendment takes effect and such first plan year.

A pension plan shall not be treated as failing to provide definitely determinable benefits or contributions, or to be operated in accordance with the provisions of the plan, merely because it operates in accordance with this subsection.

"(d) INTERAGENCY COORDINATION.—The regulations and rulings issued by the Secretary of Labor, the regulations and rulings issued by the Secretary of the Treasury, and the regulations and rulings issued by the Equal Employment Opportunity Commission pursuant to the amendments made by this subtitle shall each be consistent with the others. The Secretary of Labor, the Secretary of the Treasury, and the Equal Employment Opportunity Commission shall each consult with the others to the extent necessary to meet the requirements of the preceding sentence.

"(e) FINAL REGULATIONS.—The Secretary of Labor, the Secretary of the Treasury, and the Equal Employment Opportunity Commission shall each issue before February 1, 1988, such final regulations as may be necessary to carry out the amendments made by this subtitle."

Amendment by Pub. L. 99-272 effective May 1, 1986, see section 9201(d)(2) of Pub. L. 99-272, set out as an Effective Date of 1986 Amendment note under section 1395p of Title 42, The Public Health and Welfare.

#### EFFECTIVE DATE OF 1984 AMENDMENTS

Section 2301(c)(2) of Pub. L. 98-369 provided that: "The amendment made by subsection (b) [amending this section] shall become effective on January 1, 1985."

Amendment by Pub. L. 98-459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98-459, set out as a note under section 3001 of Title 42, The Public Health and Welfare.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Section 116(c) of Pub. L. 97-248 provided that: "The amendment made by subsection (a) [amending this section] shall become effective on January 1, 1983, and the amendment made by subsection (b) [enacting section 1395y(b)(3) of Title 42, The Public Health and Welfare] shall apply with respect to items and services furnished on or after such date."

#### EFFECTIVE DATE OF 1978 AMENDMENT

Section 2(b) of Pub. L. 95-256 provided that: "The amendment made by subsection (a) of this section [amending this section] shall take effect on the date of enactment of this Act [Apr. 6, 1978], except that, in the case of employees covered by a collective bargaining agreement which is in effect on September 1, 1977, which was entered into by a labor organization (as defined by section 6(d)(4) of the Fair Labor Standards Act of 1938 [section 206(d)(4) of this title]), and which would otherwise be prohibited by the amendment made by section 3(a) of this Act [amending section 631 of this title], the amendment made by subsection (a) of this section [amending this section] shall take effect upon the termination of such agreement or on January 1, 1980, whichever occurs first."

#### TRANSFER OF FUNCTIONS

All functions vested by this section in the Secretary of Labor or the Civil Service Commission were transferred to the Equal Employment Opportunity Commission by Reorg. Plan No. 1 of 1978, § 2, 43 F.R. 19807, 92 Stat. 3781, set out in the Appendix to Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-101 of Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 626, 631 of this title.

§ 624. Study by Secretary of Labor; reports to President and Congress; scope of study; implementation of study; transmittal date of reports

(a)(1) The Secretary of Labor is directed to undertake an appropriate study of institutional and other arrangements giving rise to involuntary retirement, and report his findings and any appropriate legislative recommendations to the President and to the Congress. Such study shall include—

(A) an examination of the effect of the amendment made by section 3(a) of the Age Discrimination in Employment Act Amendments of 1978 in raising the upper age limitation established by section 631(a) of this title to 70 years of age;

(B) a determination of the feasibility of eliminating such limitation;

(C) a determination of the feasibility of raising such limitation above 70 years of age; and

(D) an examination of the effect of the exemption contained in section 631(c) of this title, relating to certain executive employees, and the exemption contained in section 631(d) of this title, relating to tenured teaching personnel.

(2) The Secretary may undertake the study required by paragraph (1) of this subsection directly or by contract or other arrangement.

(b) The report required by subsection (a) of this section shall be transmitted to the President and to the Congress as an interim report not later than January 1, 1981, and in final form not later than January 1, 1982.

(Pub. L. 90-202, § 5, Dec. 15, 1967, 81 Stat. 604; Pub. L. 95-256, § 6, Apr. 6, 1978, 92 Stat. 192.)

#### REFERENCES IN TEXT

Section 3(a) of the Age Discrimination in Employment Act Amendments of 1978, referred to in subsec. (a)(1)(A), is section 3(a) of Pub. L. 95-256, Apr. 6, 1978, 92 Stat. 189, which amended section 631 of this title.

#### AMENDMENTS

1978—Pub. L. 95-256 designated existing provisions as par. (1), added cls. (A) to (D), added par. (2), and added subsec. (b).

#### STUDY TO ANALYZE POTENTIAL CONSEQUENCES OF ELIMINATION OF MANDATORY RETIREMENT ON INSTITUTIONS OF HIGHER EDUCATION

Pub. L. 99-592, § 6(c), Oct. 31, 1986, 100 Stat. 3344, provided that:

"(1) The Equal Employment Opportunity Commission shall, not later than 12 months after the date of enactment of this Act [Oct. 31, 1986], enter into an agreement with the National Academy of Sciences for the conduct of a study to analyze the potential consequences of the elimination of mandatory retirement on institutions of higher education.

"(2) The study required by paragraph (1) of this subsection shall be conducted under the general supervision of the National Academy of Sciences by a study panel composed of 9 members. The study panel shall consist of—

"(A) 4 members who shall be administrators at institutions of higher education selected by the Na-

tional Academy of Sciences after consultation with the American Council of Education, the Association of American Universities, and the National Association of State Universities and Land Grant Colleges;

"(B) 4 members who shall be teachers or retired teachers at institutions of higher education (who do not serve in an administrative capacity at such institutions), selected by the National Academy of Sciences after consultation with the American Federation of Teachers, the National Education Association, the American Association of University Professors, and the American Association of Retired Persons; and

"(C) one member selected by the National Academy of Sciences.

"(3) The results of the study shall be reported, with recommendations, to the President and to the Congress not later than 5 years after the date of enactment of this Act [Oct. 31, 1986].

"(4) The expenses of the study required by this subsection shall be paid from funds available to the Equal Employment Opportunity Commission."

#### § 625. Administration

The Secretary shall have the power—

(a) Delegation of functions; appointment of personnel; technical assistance

to make delegations, to appoint such agents and employees, and to pay for technical assistance on a fee for service basis, as he deems necessary to assist him in the performance of his functions under this chapter;

(b) Cooperation with other agencies, employers, labor organizations, and employment agencies

to cooperate with regional, State, local, and other agencies, and to cooperate with and furnish technical assistance to employers, labor organizations, and employment agencies to aid in effectuating the purposes of this chapter.

(Pub. L. 90-202, § 6, Dec. 15, 1967, 81 Stat. 604.)

#### TRANSFER OF FUNCTIONS

All functions relating to age discrimination administration and enforcement vested by this section in the Secretary of Labor or the Civil Service Commission were transferred to the Equal Employment Opportunity Commission by Reorg. Plan No. 1 of 1978, § 2, 43 F.R. 19807, 92 Stat. 3781, set out in the Appendix to Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-101 of Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053.

#### § 626. Recordkeeping, investigation, and enforcement

(a) Attendance of witnesses; investigations, inspections, records, and homework regulations

The Equal Employment Opportunity Commission shall have the power to make investigations and require the keeping of records necessary or appropriate for the administration of this chapter in accordance with the powers and procedures provided in sections 209 and 211 of this title.

(b) Enforcement; prohibition of age discrimination under fair labor standards; unpaid minimum wages and unpaid overtime compensation; liquidated damages; judicial relief; conciliation, conference, and persuasion

The provisions of this chapter shall be enforced in accordance with the powers, remedies, and procedures provided in sections 211(b), 216

(except for subsection (a) thereof), and 217 of this title, and subsection (c) of this section. Any act prohibited under section 623 of this title shall be deemed to be a prohibited act under section 215 of this title. Amounts owing to a person as a result of a violation of this chapter shall be deemed to be unpaid minimum wages or unpaid overtime compensation for purposes of sections 216 and 217 of this title: *Provided*, That liquidated damages shall be payable only in cases of willful violations of this chapter. In any action brought to enforce this chapter the court shall have jurisdiction to grant such legal or equitable relief as may be appropriate to effectuate the purposes of this chapter, including without limitation judgments compelling employment, reinstatement or promotion, or enforcing the liability for amounts deemed to be unpaid minimum wages or unpaid overtime compensation under this section. Before instituting any action under this section, the Equal Employment Opportunity Commission shall attempt to eliminate the discriminatory practice or practices alleged, and to effect voluntary compliance with the requirements of this chapter through informal methods of conciliation, conference, and persuasion.

(c) Civil actions; persons aggrieved; jurisdiction; judicial relief; termination of individual action upon commencement of action by Commission; jury trial

(1) Any person aggrieved may bring a civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this chapter: *Provided*, That the right of any person to bring such action shall terminate upon the commencement of an action by the Equal Employment Opportunity Commission to enforce the right of such employee under this chapter.

(2) In an action brought under paragraph (1), a person shall be entitled to a trial by jury of any issue of fact in any such action for recovery of amounts owing as a result of a violation of this chapter, regardless of whether equitable relief is sought by any party in such action.

(d) Filing of charge with Commission; timeliness; conciliation, conference, and persuasion

No civil action may be commenced by an individual under this section until 60 days after a charge alleging unlawful discrimination has been filed with the Equal Employment Opportunity Commission. Such a charge shall be filed—

(1) within 180 days after the alleged unlawful practice occurred; or

(2) in a case to which section 633(b) of this title applies, within 300 days after the alleged unlawful practice occurred, or within 30 days after receipt by the individual of notice of termination of proceedings under State law, whichever is earlier.

Upon receiving such a charge, the Commission shall promptly notify all persons named in such charge as prospective defendants in the action and shall promptly seek to eliminate any alleged unlawful practice by informal methods of conciliation, conference, and persuasion.



(e) Statute of limitations; reliance in future on administrative ruling, etc.; tolling

(1) Sections 255 and 259 of this title shall apply to actions under this chapter.

(2) For the period during which the Equal Employment Opportunity Commission is attempting to effect voluntary compliance with requirements of this chapter through informal methods of conciliation, conference, and persuasion pursuant to subsection (b) of this section, the statute of limitations as provided in section 255 of this title shall be tolled, but in no event for a period in excess of one year.

(Pub. L. 90-202, § 7, Dec. 15, 1967, 81 Stat. 604; Pub. L. 95-256, § 4(a), (b)(1), (c)(1), Apr. 6, 1978, 92 Stat. 190, 191; 1978 Reorg. Plan No. 1, § 2, eff. Jan. 1, 1979, 43 F.R. 19807, 92 Stat. 3781.)

#### AMENDMENTS

1978—Subsec. (c). Pub. L. 95-256, § 4(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (d). Pub. L. 95-256, § 4(b)(1), substituted references to the filing of a charge with the Secretary alleging unlawful discrimination for references to the filing with the Secretary of notice of intent to sue.

Subsec. (e). Pub. L. 95-256, § 4(c)(1), designated existing provisions as par. (1) and added par. (2).

#### EFFECTIVE DATE OF 1978 AMENDMENT

Section 4(b)(2) of Pub. L. 95-256 provided that: "The amendment made by paragraph (1) of this subsection [amending this section] shall take effect with respect to civil actions brought after the date of enactment of this Act [Apr. 6, 1978]."

Section 4(c)(2) of Pub. L. 95-256 provided that: "The amendment made by paragraph (1) of this subsection [amending this section] shall take effect with respect to conciliations commenced by the Secretary of Labor after the date of enactment of this Act [Apr. 6, 1978]."

#### TRANSFER OF FUNCTIONS

"Equal Employment Opportunity Commission" and "Commission" were substituted for "Secretary", meaning the Secretary of Labor, pursuant to Reorg. Plan No. 1 of 1978, § 2, 43 F.R. 19807, 92 Stat. 3781, set out in the Appendix to Title 5, Government Organization and Employees, which transferred all functions vested by this section in the Secretary of Labor to the Equal Employment Opportunity Commission, effective Jan. 1, 1979, as provided by section 1-101 of Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053.

#### AGE DISCRIMINATION CLAIMS ASSISTANCE

Pub. L. 100-283, Apr. 7, 1988, 102 Stat. 78, provided that:

##### "SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Age Discrimination Claims Assistance Act of 1988'.

##### "SEC. 2. FINDINGS.

"The Congress finds that—

"(1) the Equal Employment Opportunity Commission (hereafter in this Act referred to as the 'Commission') has failed to process an undetermined number of charges filed under the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621-634) before the running of the statute of limitations applicable to bringing civil actions in the Federal courts under such Act, and

"(2) many persons who filed such charges with the Commission have lost the right to bring private civil actions with respect to the unlawful practices alleged in such charges.

##### "SEC. 3. EXTENSION OF STATUTE OF LIMITATIONS.

"Notwithstanding section 7(e) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 626(e)), a

civil action may be brought under section 7 of such Act by the Commission or an aggrieved person, during the 540-day period beginning on the date of enactment of this Act [Apr. 7, 1988] if—

"(1) with respect to the alleged unlawful practice on which the claim in such civil action is based, a charge was timely filed under such Act with the Commission after December 31, 1983,

"(2) the Commission did not, within the applicable period set forth in section 7(e) either—

"(A) eliminate such alleged unlawful practice by informal methods of conciliation, conference, and persuasion, or

"(B) notify such person, in writing, of the disposition of such charge and of the right of such person to bring a civil action on such claim,

"(3) the statute of limitations applicable under such section 7(e) to such claim ran before the date of enactment of this Act, and

"(4) a civil action on such claim was not brought by the Commission or such person before the running of the statute of limitations.

##### "SEC. 4. NOTICE OF STATUTE OF LIMITATIONS.

"(a) NOTICE REGARDING CLAIMS FOR WHICH STATUTE OF LIMITATIONS IS EXTENDED.—Not later than 60 days after the date of enactment of this Act [Apr. 7, 1988], the Commission shall provide the notice specified in subsection (b) to each person who has filed a charge to which section 3 applies.

"(b) CONTENTS OF NOTICE.—The notice required to be provided under subsection (a) to a person shall be in writing and shall include the following information:

"(1) The rights and benefits to which such person is entitled under the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.).

"(2) The date (which is 540 days after the date of the enactment of this Act) on which the statute of limitations applicable to such person's claim will run.

"(3) That such person may bring a civil action on such claim before the date specified in paragraph (2).

##### "SEC. 5. REPORTS.

"(a) CONTENTS OF REPORTS.—For each 180-day period in the 540-day period beginning on the date of enactment of this Act [Apr. 7, 1988], the Commission shall submit a written report that includes all of the following information:

"(1) The number of persons who have claims to which section 3 applies and the dates charges based on such claims were filed with the Commission.

"(2) The number of persons to whom notice was provided in accordance with section 4(a) and the date the notice was provided.

"(3) With respect to alleged unlawful practices on which claims affected by section 3 are based, the number of such alleged unlawful practices that the Commission has attempted to eliminate by informal methods of conciliation, conference, and persuasion in the 180-day period for which the report is submitted.

"(4) The number of alleged unlawful practices referred to in paragraph (3) that were so eliminated in such period.

"(5) The number of civil actions filed by the Commission on behalf of persons to whom notice was sent under section 4.

"(b) SUBMISSION OF REPORTS.—Each report required by subsection (a) shall be submitted by the Commission to—

"(1) the Committee on Education and Labor, and the Select Committee on Aging, of the House of Representatives, and

"(2) the Committee on Labor and Human Resources, and the Special Committee on Aging, of the Senate,

not later than 30 days after the expiration of the 180-day period for which such report is required."



## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 633 of this title.

## § 627. Notices to be posted

Every employer, employment agency, and labor organization shall post and keep posted in conspicuous places upon its premises a notice to be prepared or approved by the Equal Employment Opportunity Commission setting forth information as the Commission deems appropriate to effectuate the purposes of this chapter.

(Pub. L. 90-202, § 8, Dec. 15, 1967, 81 Stat. 605; 1978 Reorg. Plan No. 1, § 2, eff. Jan. 1, 1979, 43 F.R. 19807, 92 Stat. 3781.)

## TRANSFER OF FUNCTIONS

"Equal Employment Opportunity Commission" and "Commission" were substituted for "Secretary", meaning the Secretary of Labor, pursuant to Reorg. Plan No. 1 of 1978, § 2, 43 F.R. 19807, 92 Stat. 3781, set out in the Appendix to Title 5, Government Organization and Employees, which transferred all functions vested by this section in the Secretary of Labor to the Equal Employment Opportunity Commission, effective Jan. 1, 1979, as provided by section 1-101 of Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053.

## § 628. Rules and regulations; exemptions

In accordance with the provisions of subchapter II of chapter 5 of title 5, the Equal Employment Opportunity Commission may issue such rules and regulations as it may consider necessary or appropriate for carrying out this chapter, and may establish such reasonable exemptions to and from any or all provisions of this chapter as it may find necessary and proper in the public interest.

(Pub. L. 90-202, § 9, Dec. 15, 1967, 81 Stat. 605; 1978 Reorg. Plan No. 1, § 2, eff. Jan. 1, 1979, 43 F.R. 19807, 92 Stat. 3781.)

## TRANSFER OF FUNCTIONS

"Equal Employment Opportunity Commission" and "it" were substituted for "Secretary of Labor" and "he", respectively, pursuant to Reorg. Plan No. 1 of 1978, § 2, 43 F.R. 19807, 92 Stat. 3781, set out in the Appendix to Title 5, Government Organization and Employees, which transferred all functions vested by this section in the Secretary of Labor to the Equal Employment Opportunity Commission, effective Jan. 1, 1979, as provided by section 1-101 of Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053.

## § 629. Criminal penalties

Whoever shall forcibly resist, oppose, impede, intimidate or interfere with a duly authorized representative of the Equal Employment Opportunity Commission while it is engaged in the performance of duties under this chapter shall be punished by a fine of not more than \$500 or by imprisonment for not more than one year, or by both: *Provided, however*, That no person shall be imprisoned under this section except when there has been a prior conviction hereunder.

(Pub. L. 90-202, § 10, Dec. 15, 1967, 81 Stat. 605; 1978 Reorg. Plan No. 1, § 2, eff. Jan. 1, 1979, 43 F.R. 19807, 92 Stat. 3781.)

## TRANSFER OF FUNCTIONS

"Equal Employment Opportunity Commission" and "it" were substituted for "Secretary", meaning the

Secretary of Labor, and "he", respectively, pursuant to Reorg. Plan No. 1 of 1978, § 2, 43 F.R. 19807, 92 Stat. 3781, set out in the Appendix to Title 5, Government Organization and Employees, which transferred all functions vested by this section in the Secretary of Labor to the Equal Employment Opportunity Commission, effective Jan. 1, 1979, as provided by section 1-101 of Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053.

## § 630. Definitions

For the purposes of this chapter—

(a) The term "person" means one or more individuals, partnerships, associations, labor organizations, corporations, business trust, legal representatives, or any organized groups of persons.

(b) The term "employer" means a person engaged in an industry affecting commerce who has twenty or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year: *Provided*, That prior to June 30, 1968, employers having fewer than fifty employees shall not be considered employers. The term also means (1) any agent of such a person, and (2) a State or political subdivision of a State and any agency or instrumentality of a State or a political subdivision of a State, and any interstate agency, but such term does not include the United States, or a corporation wholly owned by the Government of the United States.

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer and includes an agent of such a person; but shall not include an agency of the United States.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is fifty or more prior to July 1, 1968, or twenty-five or more on or after July 1, 1968, and such labor organization—

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended [29 U.S.C. 151 et seq.], or the Railway Labor Act, as amended [45 U.S.C. 151 et seq.]; or

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by any employer except that the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policymaking level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency, or political subdivision. The term "employee" includes any individual who is a citizen of the United States employed by an employer in a workplace in a foreign country.

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959 [29 U.S.C. 401 et seq.].

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.].

(j) The term "firefighter" means an employee, the duties of whose position are primarily to perform work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment, including an employee engaged in

this activity who is transferred to a supervisory or administrative position.

(k) The term "law enforcement officer" means an employee, the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of a State, including an employee engaged in this activity who is transferred to a supervisory or administrative position. For the purpose of this subsection, "detention" includes the duties of employees assigned to guard individuals incarcerated in any penal institution.

(Pub. L. 90-202, § 11, Dec. 15, 1967, 81 Stat. 605; Pub. L. 93-259, § 28(a)(1)-(4), Apr. 8, 1974, 88 Stat. 74; Pub. L. 98-459, title VIII, § 802(a), Oct. 9, 1984, 98 Stat. 1792; Pub. L. 99-592, § 4, Oct. 31, 1986, 100 Stat. 3343.)

#### REFERENCES IN TEXT

The National Labor Relations Act, referred to in subsec. (e)(1), is act July 5, 1935, ch. 372, 49 Stat. 452, as amended, which is classified generally to subchapter II (§ 151 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 167 of this title and Tables.

The Railway Labor Act, referred to in subsec. (e)(1), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§ 151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

The Labor-Management Reporting and Disclosure Act of 1959, referred to in subsec. (h), is Pub. L. 86-257, Sept. 14, 1959, 73 Stat. 519, as amended, which is classified principally to chapter 11 (§ 401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title, and Tables.

For definition of Canal Zone, referred to in subsec. (i), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

The Outer Continental Shelf Lands Act, referred to in subsec. (i), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§ 1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of Title 43 and Tables.

#### AMENDMENTS

1986—Subsecs. (j), (k). Pub. L. 99-592 added subsecs. (j) and (k).

1984—Subsec. (f). Pub. L. 98-459 inserted provision defining "employee" as including any individual who is a citizen of the United States employed by an employer in a workplace in a foreign country.

1974—Subsec. (b). Pub. L. 93-259, § 28(a)(1), (2), substituted in first sentence "twenty" for "twenty-five" and, in second sentence, defined term "employer" to include a State or political subdivision of a State and any agency or instrumentality of a State or a political subdivision of a State, and any interstate agency, and deleted text excluding from such term a State or political subdivision thereof.

Subsec. (c). Pub. L. 93-259, § 28(a)(3), struck out text excluding from term "employment agency" an agency of a State or political subdivision of a State, but including the United States Employment Service and the system of State and local employment services receiving Federal assistance.

Subsec. (f). Pub. L. 93-259, § 28(a)(4), excepted from the term "employee" elected public officials, persons chosen by such officials for such officials' personal staff, appointees on policymaking level, and immediate advisers with respect to exercise of constitutional

or legal powers of the public office but excluded from such exemption employees subject to civil laws of a State government, governmental agency, or political subdivision.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-592 effective Jan. 1, 1987, with certain exceptions, but not applicable with respect to any cause of action arising under this chapter as in effect before Jan. 1, 1987, see section 7 of Pub. L. 99-592, set out as an Effective and Termination Dates of 1986 Amendment note under section 623 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98-459, set out as a note under section 3001 of Title 42, The Public Health and Welfare.

#### EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-259 effective May 1, 1974, see section 29(a) of Pub. L. 93-259, set out as a note under section 202 of this title.

#### TRANSFER OF FUNCTIONS

All functions vested by this section in the Secretary of Labor or the Civil Service Commission were transferred to the Equal Employment Opportunity Commission by Reorg. Plan No. 1 of 1978, § 2, 43 F.R. 19807, 92 Stat. 3781, set out in the Appendix to Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-101 of Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053.

#### CROSS REFERENCES

Industry affecting commerce, see section 402 of this title.

Outer Continental Shelf, see section 1331 of Title 43, Public Lands.

### § 631. Age limits

#### (a) Individuals at least 40 years of age

The prohibitions in this chapter (except the provisions of section 623(g) of this title) shall be limited to individuals who are at least 40 years of age.

#### (b) Employees or applicants for employment in Federal Government

In the case of any personnel action affecting employees or applicants for employment which is subject to the provisions of section 633a of this title, the prohibitions established in section 633a of this title shall be limited to individuals who are at least 40 years of age.

#### (c) Bona fide executives or high policymakers

(1) Nothing in this chapter shall be construed to prohibit compulsory retirement of any employee who has attained 65 years of age and who, for the 2-year period immediately before retirement, is employed in a bona fide executive or a high policymaking position, if such employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of such plans, of the employer of such employee, which equals, in the aggregate, at least \$44,000.

(2) In applying the retirement benefit test of paragraph (1) of this subsection, if any such retirement benefit is in a form other than a straight life annuity (with no ancillary bene-

fits), or if employees contribute to any such plan or make rollover contributions, such benefit shall be adjusted in accordance with regulations prescribed by the Equal Employment Opportunity Commission, after consultation with the Secretary of the Treasury, so that the benefit is the equivalent of a straight life annuity (with no ancillary benefits) under a plan to which employees do not contribute and under which no rollover contributions are made.

#### (d) Tenured employee at institution of higher education

Nothing in this chapter shall be construed to prohibit compulsory retirement of any employee who has attained 70 years of age, and who is serving under a contract of unlimited tenure (or similar arrangement providing for unlimited tenure) at an institution of higher education (as defined by section 1141(a) of title 20).

(Pub. L. 90-202, § 12, Dec. 15, 1967, 81 Stat. 607; Pub. L. 95-256, § 3(a), (b)(3), Apr. 6, 1978, 92 Stat. 189, 190; 1978 Reorg. Plan No. 1, § 2, eff. Jan. 1, 1979, 43 F.R. 19807, 92 Stat. 3781; Pub. L. 98-459, title VIII, § 802(c)(1), Oct. 9, 1984, 98 Stat. 1792; Pub. L. 99-272, title IX, § 9201(b)(2), Apr. 7, 1986, 100 Stat. 171; Pub. L. 99-592, §§ 2(c), 6(a), Oct. 31, 1986, 100 Stat. 3342, 3344.)

#### AMENDMENTS

1986—Subsec. (a). Pub. L. 99-592, § 2(c)(1), which directed that “but less than seventy years of age” be struck out was executed by striking out “but less than 70 years of age” after “40 years of age” as the probable intent of Congress.

Pub. L. 99-272 inserted “(except the provisions of section 623(g) of this title)” after “this chapter”.

Subsec. (c)(1). Pub. L. 99-592, § 2(c)(2), which directed that “but not seventy years of age,” be struck out, was executed by striking out “but not 70 years of age,” after “65 years of age” as the probable intent of Congress.

Subsec. (d). Pub. L. 99-592, § 6(a), temporarily added subsec. (d). See section 6(b) of Pub. L. 99-592, set out in Effective and Termination Dates of 1986 Amendments note below.

1984—Subsec. (c)(1). Pub. L. 98-459 substituted “\$44,000” for “\$27,000”.

Pub. L. 95-256, § 3(a), designated existing provisions as subsec. (a), substituted “40 years of age but less than 70 years of age” for “forty years of age but less than sixty-five years of age”, added subsecs. (b) and (c), and temporarily added subsec. (d). See Effective and Termination Dates of 1978 Amendment note below.

#### EFFECTIVE AND TERMINATION DATES OF 1986 AMENDMENTS

Amendment by Pub. L. 99-592 effective Jan. 1, 1987, with certain exceptions, see section 7(a) of Pub. L. 99-592 set out as a note under section 623 of this title. Section 6(b) of Pub. L. 99-592 provided that: “The amendment made by subsection (a) of this section [amending this section] is repealed December 31, 1993.”

Amendment by Pub. L. 99-272 effective May 1, 1986, see section 9201(d)(2) of Pub. L. 99-272, set out as an Effective Date of 1986 Amendment note under section 1395p of Title 42, The Public Health and Welfare.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Section 802(c)(2) of Pub. L. 98-459 provided that: “The amendment made by paragraph (1) of this subsection [amending this section] shall not apply with respect to any individual who retires, or is compelled

to retire, before the date of the enactment of this Act [Oct. 9, 1984]."

#### EFFECTIVE AND TERMINATION DATES OF 1978 AMENDMENT

Section 3(b) of Pub. L. 95-256 provided that:

"(1) Sections 12(a), 12(c), and 12(d) of the Age Discrimination in Employment Act of 1967, as amended by subsection (a) of this section [subsecs. (a), (c), and (d) of this section] shall take effect on January 1, 1979.

"(2) Section 12(b) of such Act, as amended by subsection (a) of this section [subsec. (b) of this section], shall take effect on September 30, 1978.

"(3) Section 12(d) of such Act, as amended by subsection (a) of this section [enacting subsec. (d) of this section], is repealed on July 1, 1982."

#### TRANSFER OF FUNCTIONS

"Equal Employment Opportunity Commission" was substituted for "Secretary", meaning the Secretary of Labor, in subsec. (c)(2) pursuant to Reorg. Plan No. 1 of 1978, § 2, 43 F.R. 19807, 92 Stat. 3781, set out in the Appendix to Title 5, Government Organization and Employees, which transferred all functions vested by this section in the Secretary of Labor to the Equal Employment Opportunity Commission, effective Jan. 1, 1979, as provided by section 1-101 of Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 622, 623, 624, 633a of this title; title 5 sections 2302, 7702; title 22 section 3905.

#### § 632. Annual report to Congress

The Equal Employment Opportunity Commission shall submit annually in January a report to the Congress covering its activities for the preceding year and including such information, data and recommendations for further legislation in connection with the matters covered by this chapter as it may find advisable. Such report shall contain an evaluation and appraisal by the Commission of the effect of the minimum and maximum ages established by this chapter, together with its recommendations to the Congress. In making such evaluation and appraisal, the Commission shall take into consideration any changes which may have occurred in the general age level of the population, the effect of the chapter upon workers not covered by its provisions, and such other factors as it may deem pertinent.

(Pub. L. 90-202, § 13, Dec. 15, 1967, 81 Stat. 607; 1978 Reorg. Plan No. 1, § 2, eff. Jan. 1, 1979, 43 F.R. 19807, 92 Stat. 3781.)

#### TRANSFER OF FUNCTIONS

"Equal Employment Opportunity Commission", "Commission", "it", and "its" were substituted for "Secretary", meaning the Secretary of Labor, "he", and "his", respectively, pursuant to Reorg. Plan No. 1 of 1978, § 2, 43 F.R. 19807, 92 Stat. 3781, set out in the Appendix to Title 5, Government Organization and Employees, which transferred all functions vested by this section in the Secretary of Labor to the Equal Employment Opportunity Commission, effective Jan. 1, 1979, as provided by section 1-101 of Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053.

#### § 633. Federal-State relationship

##### (a) Federal action superseding State action

Nothing in this chapter shall affect the jurisdiction of any agency of any State performing

like functions with regard to discriminatory employment practices on account of age except that upon commencement of action under this chapter such action shall supersede any State action.

##### (b) Limitation of Federal action upon commencement of State proceedings

In the case of an alleged unlawful practice occurring in a State which has a law prohibiting discrimination in employment because of age and establishing or authorizing a State authority to grant or seek relief from such discriminatory practice, no suit may be brought under section 626 of this title before the expiration of sixty days after proceedings have been commenced under the State law, unless such proceedings have been earlier terminated: *Provided*, That such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State law. If any requirement for the commencement of such proceedings is imposed by a State authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State authority.

(Pub. L. 90-202, § 14, Dec. 15, 1967, 81 Stat. 607.)

#### TRANSFER OF FUNCTIONS

All functions vested by this section in the Secretary of Labor or the Civil Service Commission were transferred to the Equal Employment Opportunity Commission by Reorg. Plan No. 1 of 1978, § 2, 43 F.R. 19807, 92 Stat. 3781, set out in the Appendix to Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-101 of Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 626 of this title.

#### § 633a. Nondiscrimination on account of age in Federal Government employment

##### (a) Federal agencies affected

All personnel actions affecting employees or applicants for employment who are at least 40 years of age (except personnel actions with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of title 5, in executive agencies as defined in section 105 of title 5 (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Rate Commission, in those units in the government of the District of Columbia having positions in the competitive service, and in those units of the legislative and judicial branches of the Federal Government having positions in the competitive service, and in the Library of Congress shall be made free from any discrimination based on age.

- (b) Enforcement by Equal Employment Opportunity Commission and by Librarian of Congress in the Library of Congress; remedies; rules, regulations, orders, and instructions of Commission; compliance by Federal agencies; powers and duties of Commission; notification of final action on complaint of discrimination; exemptions: bona fide occupational qualification

Except as otherwise provided in this subsection, the Equal Employment Opportunity Commission is authorized to enforce the provisions of subsection (a) of this section through appropriate remedies, including reinstatement or hiring of employees with or without backpay, as will effectuate the policies of this section. The Equal Employment Opportunity Commission shall issue such rules, regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Equal Employment Opportunity Commission shall—

- (1) be responsible for the review and evaluation of the operation of all agency programs designed to carry out the policy of this section, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each department, agency, or unit referred to in subsection (a) of this section;
- (2) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to nondiscrimination in employment on account of age; and
- (3) provide for the acceptance and processing of complaints of discrimination in Federal employment on account of age.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions of the Equal Employment Opportunity Commission which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder. Reasonable exemptions to the provisions of this section may be established by the Commission but only when the Commission has established a maximum age requirement on the basis of a determination that age is a bona fide occupational qualification necessary to the performance of the duties of the position. With respect to employment in the Library of Congress, authorities granted in this subsection to the Equal Employment Opportunity Commission shall be exercised by the Librarian of Congress.

- (c) Civil actions; jurisdiction; relief

Any person aggrieved may bring a civil action in any Federal district court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this chapter.

- (d) Notice to Commission; time of notice; Commission notification of prospective defendants; Commission elimination of unlawful practices

When the individual has not filed a complaint concerning age discrimination with the Commission, no civil action may be commenced by any individual under this section until the individual has given the Commission not less than thirty days' notice of an intent to file such action. Such notice shall be filed within one

hundred and eighty days after the alleged unlawful practice occurred. Upon receiving a notice of intent to sue, the Commission shall promptly notify all persons named therein as prospective defendants in the action and take any appropriate action to assure the elimination of any unlawful practice.

- (e) Duty of Government agency or official

Nothing contained in this section shall relieve any Government agency or official of the responsibility to assure nondiscrimination on account of age in employment as required under any provision of Federal law.

- (f) Applicability of statutory provisions to personnel action of Federal departments, etc.

Any personnel action of any department, agency, or other entity referred to in subsection (a) of this section shall not be subject to, or affected by, any provision of this chapter, other than the provisions of section 631(b) of this title and the provisions of this section.

- (g) Study and report to President and Congress by Equal Employment Opportunity Commission; scope

(1) The Equal Employment Opportunity Commission shall undertake a study relating to the effects of the amendments made to this section by the Age Discrimination in Employment Act Amendments of 1978, and the effects of section 631(b) of this title.

(2) The Equal Employment Opportunity Commission shall transmit a report to the President and to the Congress containing the findings of the Commission resulting from the study of the Commission under paragraph (1) of this subsection. Such report shall be transmitted no later than January 1, 1980.

(Pub. L. 90-202, § 15, as added Pub. L. 93-259, § 28(b)(2), Apr. 8, 1974, 88 Stat. 74, and amended Pub. L. 95-256, § 5(a), (e), Apr. 6, 1978, 92 Stat. 191; 1978 Reorg. Plan No. 1, eff. Jan. 1, 1979, § 2, 43 F.R. 19807, 92 Stat. 3781.)

#### REFERENCES IN TEXT

The amendments made to this section by the Age Discrimination in Employment Act Amendments of 1978, referred to in subsec. (g)(1), are amendments by section 5(a) and (e) of Pub. L. 95-256, which amended subsecs. (a), (f), and (g) of this section.

#### AMENDMENTS

1978—Subsec. (a). Pub. L. 95-256, § 5(a), inserted age requirement of at least 40 years of age, and "personnel actions" after "except".

Subsecs. (f), (g). Pub. L. 95-256, § 5(e), added subsecs. (f) and (g).

#### EFFECTIVE DATE OF 1978 AMENDMENT

Section 5(f) of Pub. L. 95-256 provided that: "The amendments made by this section [amending this section and sections 8335 and 8339 of Title 5, Government Organization and Employees, and repealing section 3322 of Title 5] shall take effect on September 30, 1978, except that section 15(g) of the Age Discrimination in Employment Act of 1967, as amended by subsection (e) of this section [subsec. (g) of this section], shall take effect on the date of enactment of this Act. [Apr. 6, 1978]."

## EFFECTIVE DATE

Section effective May 1, 1974, see section 29(a) of Pub. L. 93-259, set out as an Effective Date of 1974 Amendment note under section 202 of this title.

## TRANSFER OF FUNCTIONS

"Equal Employment Opportunity Commission" was substituted for "Civil Service Commission" in subsecs. (b) and (g) pursuant to Reorg. Plan No. 1 of 1978, § 2, 43 F.R. 19807, 92 Stat. 3781, set out in the Appendix to Title 5, Government Organization and Employees, which transferred all functions vested by this section in the Civil Service Commission to the Equal Employment Opportunity Commission, effective Jan. 1, 1979, as provided by section 1-101 of Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053.

## CROSS REFERENCES

Equal employment opportunities for Federal employees without discrimination because of race, color, religion, sex, or national origin, see section 7201 of Title 5, Government Organization and Employees.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 631 of this title; title 5 sections 2302, 7702, 7703; title 22 section 3905.

## § 634. Authorization of appropriations

There are hereby authorized to be appropriated such sums as may be necessary to carry out this chapter.

(Pub. L. 90-202, § 17, formerly § 16, Dec. 15, 1967, 81 Stat. 608, renumbered and amended Pub. L. 93-259, § 28(a)(5), (b)(1), Apr. 8, 1974, 88 Stat. 74; Pub. L. 95-256, § 7, Apr. 6, 1978, 92 Stat. 193.)

## AMENDMENTS

1978—Pub. L. 95-256 struck out " , not in excess of \$5,000,000 for any fiscal year," after "sums".

1974—Pub. L. 93-259, § 28(a)(5), increased appropriations authorization to \$5,000,000 from \$3,000,000.

## EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-259 effective May 1, 1974, see section 29(a) of Pub. L. 93-259, set out as a note under section 202 of this title.

## TRANSFER OF FUNCTIONS

All functions relating to age discrimination administration and enforcement vested by this section in the Secretary of Labor or the Civil Service Commission were transferred to the Equal Employment Opportunity Commission by Reorg. Plan No. 1 of 1978, § 2, 43 F.R. 19807, 92 Stat. 3781, set out in the Appendix to Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-101 of Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053.

## CHAPTER 15—OCCUPATIONAL SAFETY AND HEALTH

## Sec.

651. Congressional statement of findings and declaration of purpose and policy.
652. Definitions.
653. Geographic applicability; judicial enforcement; applicability to existing standards; report to Congress on duplication and coordination of Federal laws; workmen's compensation law or common law or statutory rights, duties, or liabilities of employers and employees unaffected.
654. Duties of employers and employees.

## Sec.

655.

## Standards.

- (a) Promulgation by Secretary of national consensus standards and established Federal standards; time for promulgation; conflicting standards.
- (b) Procedure for promulgation, modification, or revocation of standards.
- (c) Emergency temporary standards.
- (d) Variances from standards; procedure.
- (e) Statement of reasons for Secretary's determinations; publication in Federal Register.
- (f) Judicial review.
- (g) Priority for establishment of standards.

656.

## Administration.

- (a) National Advisory Committee on Occupational Safety and Health; establishment; membership; appointment; Chairman; functions; meetings; compensation; secretarial and clerical personnel.
- (b) Advisory committees; appointment; duties; membership; compensation; reimbursement to member's employer; meetings; availability of records; conflict of interest.
- (c) Use of services, facilities, and personnel of Federal, State, and local agencies; reimbursement; employment of experts and consultants or organizations; renewal of contracts; compensation; travel expenses.

657.

## Inspections, investigations, and recordkeeping.

- (a) Authority of Secretary to enter, inspect, and investigate places of employment; time and manner.
- (b) Attendance and testimony of witnesses and production of evidence; enforcement of subpoena.
- (c) Maintenance, preservation, and availability of records; issuance of regulations; scope of records; periodic inspections by employer; posting of notices by employer; notification of employee of corrective action.
- (d) Obtaining of information.
- (e) Employer and authorized employee representatives to accompany Secretary or his authorized representative on inspection of workplace; consultation with employees where no authorized employee representative is present.
- (f) Request for inspection by employees or representative of employees; grounds; procedure; determination of request; notification of Secretary or representative prior to or during any inspection of violations; procedure for review of refusal by representative of Secretary to issue citation for alleged violations.
- (g) Compilation, analysis, and publication of reports and information; rules and regulations.

658.

## Citations.

- (a) Authority to issue; grounds; contents; notice in lieu of citation for de minimis violations.
- (b) Posting.
- (c) Time for issuance.